

## Message Text

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ORIGIN IO-14

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TO AMEMBASSY CANBERRA

INFO AMCONSUL MELBOURNE

AMCONSUL MONTREAL

AMCONSUL BRISBANE

AMCONSUL PERTH

AMCONSUL SYDNEY

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MONTREAL FOR US REP ICAO

E.O. 11652: N/A

TAGS: PORG, ICAO, AS, US, EAIR

SUBJECT: ICAO GENERAL ASSEMBLY - SENEGALESE-BELGIAN COUNCIL  
PROPOSALS AND AUSTRALIAN CANDIDACY

REF: CANBERRA 5282

1. COUNCIL PROPOSALS: U.S. VIEWS SENEGALESE AND BELGIAN  
PROPOSALS TO MODIFY COUNCIL ELECTIONS AND COMPOSITION AS  
TWO DISTINCT PROPOSALS NOT NECESSARILY MUTUALLY EXCLUSIVE.  
BOTH MAY WELL BE PRESSED FOR ADOPTION BY THE ASSEMBLY, THE  
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BELGIAN SIMPLY TO EXPAND THE COUNCIL AND THE SENEGALESE

ESSENTIALLY TO INCREASE REPRESENTATION FOR LDC'S. U.S. CONTINUES TO OPPOSE BOTH EXPANSION OF OR ANY CHANGE IN PRESENT COMPOSITION OF THE COUNCIL.

A. U.S. VIEWS ON BELGIAN PROPOSAL:

(1) ICAO COUNCIL EXPANDED ONLY YEAR AGO, FROM 27 TO 30, AND NOT ENOUGH TIME HAS ELAPSED FOR ADEQUATE ASSESSMENT TO BE MADE OF SUITABILITY OF PRESENT SIZE. FURTHERMORE, ICAO COUNCIL IS EXCEPTIONAL AS IT MEETS IN PERMANENT SESSION REQUIRING CONTINUOUS AND COSTLY PRESENCE OF NATIONAL REPRESENTATIVES AND SUPPORT STAFFS IN MONTREAL. RISK OF ABSENTEEISM, AND CONSEQUENT WEAKENING OF COUNCIL ROLE, INCREASES AS COUNCIL EXPANDED. MOREOVER, FURTHER EXPANSION OF COUNCIL WOULD INVOLVE IMPORTANT BUDGETARY AND SPACE

CONSIDERATIONS WHICH WOULD FLOW FROM ANY EXPANSION OF THE COUNCIL (EXPANDED SUPPORT REQUIREMENTS INCLUDING DOCUMENTATION, INTERPRETATION, ACCOMMODATION FACILITATION). THEREFORE ANY SUCH PROPOSAL MUST BE CONSIDERED CAREFULLY FROM THIS POINT OF VIEW ALSO.

(II) ESSENTIALLY WE FEEL COUNCIL OF 30 IS ADEQUATE TO ASSURE FAIR REPRESENTATION, AND REPRESENTS UPWARD PRACTICAL LIMIT FOR BODY IN PERMANENT SESSION. PRESENT SIZE PROVIDES FOR REPRESENTATION OF ALMOST ONE-QUARTER OF ICAO MEMBERSHIP, WHICH PRESENTLY IS THE ROUGH NORM IN THE UN SYSTEM IN WHICH EXECUTIVE BODIES ARE NOT ELSEWHERE IN PERMANENT SESSION. INDEED, FACT THAT ICAO COUNCIL IS IN PERMANENT SESSION ARGUES FOR LOWER RATIO.

B. LEGAL OPINIONS ON SENEGALESE PROPOSAL:

(I) DEPT LEGAL OPINION IS THAT ARTICLE 50 OF CHICAGO CONVENTION, PARAGRAPH (B), ESTABLISHES THE REPRESENTATIONAL REQUIREMENT OF THE COUNCIL. IT IS MANDATORY IN ITS LANGUAGE WITH RESPECT TO THE VARIOUS CATEGORIES. THE SENEGALESE PROPOSAL DEVIATES FROM ARTICLE 50, IN THAT IT WOULD ADD THE ADDITIONAL REQUIREMENT OF GEOGRAPHIC DISTRIBUTION TO CATEGORIES (1) AND (2) OF PARA (B) OF ARTICLE 50.

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THE CONCEPT OF GEOGRAPHIC DISTRIBUTION IS PROVIDED FOR IN CATEGORY (3). AT THE ASSEMBLY, IT MAY WELL BE ARGUED THAT THE ADDITIONAL REQUIREMENT OF GEOGRAPHIC DISTRIBUTION IN CATEGORIES (1) AND (2) IS MERELY A PROCEDURAL MATTER. WE ARE CONVINCED THAT SINCE GEOGRAPHIC DISTRIBUTION IS EXPLICITLY PROVIDED FOR IN CATEGORY (3), THE ADDITION OF THIS REQUIREMENT IS SUBSTANTIVE AND WOULD REQUIRE AN AMENDMENT TO THE CONVENTION. WE BELIEVE THE PROVISION OF THE

SENEGALESE PROPOSAL DEALING WITH THE MAXIMUM NUMBER OF STATES TO BE ELECTED IN EACH CATEGORY SHOULD BE TREATED AS A PROCEDURAL QUESTION.

(II) WE UNDERSTAND THAT THE ICAO SECRETARIAT LEGAL OPINION, PREPARED IN CONTEXT OF COUNCIL DISCUSSIONS, STATED THAT ARTICLE 50(B) OF THE CONVENTION GIVES STATES RIGHT TO RUN IN MORE THAN ONE CATEGORY, AND THAT INTRODUCING GEOGRAPHIC CONSIDERATION INTO CATEGORIES (1) AND (2) IS NOT IN KEEPING WITH THE SPIRIT OF THE CONVENTION BECAUSE DEFINITIONS IN THESE CATEGORIES ARE LIMITED TO QUALIFICATIONS OTHER THAN GEOGRAPHIC. IN ADDITION, AT THE TWELFTH SESSION OF THE ASSEMBLY A REPORT OF THE ICAO LEGAL COMMITTEE ON THE RULES OF PROCEDURE FOR ELECTION OF THE COUNCIL WAS CIRCULATED WHICH STATED:

QUOTE: SINCE THE CONVENTION IN NO WAY LIMITS THE RIGHT OF A STATE TO BE A CANDIDATE FOR ELECTION IN ANY OF THE TYPES OF REPRESENTATION PROVIDED FOR IN ARTICLE 50, A RULE OF PROCEDURE WHICH LIMITED THE RIGHT OF CANDIDACY WOULD BE INCONSISTENT WITH THE CONVENTION. ON THE OTHER HAND, A RULE WHICH DRAWS ATTENTION TO THE REQUIREMENTS SET FORTH IN THE CONVENTION AND WHICH PROVIDES A PROCEDURE TO ENABLE THE ASSEMBLY TO DISCHARGE ITS FUNCTIONS AND OBLIGATIONS UNDER ARTICLE 50 IS CONSISTENT WITH THE CONVENTION. UNQUOTE

2. AUSTRALIAN CANDIDACY FOR COUNCIL: AT THIS POINT WE CANNOT ANALYZE AND PREDICT THE EXACT SITUATION WHICH WILL DEVELOP REGARDING COUNCIL ELECTIONS AS A RESULT OF THE COMPLICATIONS DEALT WITH IN THE FOREGOING AND TO THE EMERGENCE OF NEW CANDIDACIES. THEREFORE, WE ARE NOT IN A POSITION TO MAKE ANY COMMITMENTS TO SUPPORT OR OPPOSE ANY LIMITED OFFICIAL USE

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CANDIDACY. HOWEVER, EMBASSY MAY STATE U.S. WILL GIVE EVERY CONSIDERATION TO CANDIDACY OF GOA FOR ELECTION TO ICAO COUNCIL UNDER FIRST PART, BEARING IN MIND THAT AUSTRALIA WAS EIGHTH LARGEST AIR TRANSPORT OPERATOR IN 1973 IN TERMS OF TOTAL TONKILOMETERS PERFORMED ON SCHEDULED AIR SERVICES. INGERSOLL

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